IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITON NO. 2156 OF 2006

M/s Alankar Agencies & Anr. ..... Petitioners.

V/s

RBS Home Appliances Ltd
and Anr. ..... Respondents.

Mr. Vijay N. Bolinjkar for Petitioners.

Mr. P.R. Thatte for Respondent No.1.

Mr. P.A. Pol, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 3rd September, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of Petitioners and the learned Counsel appearing on behalf of Respondent No.1.

2. Petitioners are original accused against whom complaint was filed by Respondent No.1 herein for an offence punishable under section 138 of the Negotiable Instruments Act. After the process was issued against the accused, the matter was adjourned from time to time. It appears that on 14/10/2005, the learned Magistrate 33rd Court, Ballard Pier, Mumbai was pleased to dismiss the complaint on the ground that the matter had been adjourned on various dates viz. 25/07/2005, 06/09/2005 and 14/10/2005 and accordingly acquitted the accused. The respondent No.1 preferred an application for

recalling the order which was passed by the learned Magistrate and it was pointed out in the said application that after a plea was recorded on 06/05/2005, the matter was adjourned on various dates on which the complainant had remained present and that the matter was adjourned to 04/10/2005 and, therefore, the dates which were mentioned in the impugned order dated 14/10/2005 were incorrect. It was submitted that the said order may be recalled. The learned Magistrate by his order dated 12/12/2005 set aside the order of dismissal dated 14/10/2005 and restored the complaint. Being aggrieved by the aforesaid order, the accused have filed present Writ Petition under Article 227 of the Constitution of India.

3. It is submitted by the learned Counsel appearing on behalf of Petitioners that in view of bar of section 362 of the Code of Criminal Procedure, it was not open for the Magistrate to recall his own order. He submitted that, therefore, the said order was liable to be quashed and set aside. He also relied on judgment of the Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal and others reported in **2004 (4) Mh.L.J. 274.**

4. The learned Counsel appearing on behalf of Respondent No.1 strenuously urged before me that the Magistrate had clearly committed an error of law which was apparent on the face of record in passing the order under section 256(1) of the Criminal Procedure Code. It was submitted that the Magistrate had not exercised his discretion in a proper and judicious manner and that he had committed an illegality by not verifying the dates which were

mentioned in the order dated 14/10/2005. He invited my attention to the provisions of Section 256 of the Criminal Procedure Code. He then submitted that the Magistrate had committed a mistake in passing the order dated 14/10/2005 and that, obviously, it was a clerical mistake since the dates mentioned in the said order were obviously incorrect which fact had been acknowledged by the Magistrate while correcting his own clerical mistake and, therefore, the impugned order was not hit by the bar prescribed under section 362 of the Criminal Procedure Code.

5. In my view, submissions made by the learned Counsel appearing on behalf of Petitioners will have to be accepted. It is a well settled position in law that the order passed by the Criminal Court which has the effect of finally adjudicating or disposing of the criminal case, cannot be reviewed in view of the bar imposed in section 362 of the Criminal Procedure Code. Section 362 of the Criminal Procedure Code reads as under:-

> "**362. Court not to alter judgment.-**
> Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

A perusal of the aforesaid provision clearly reveals that no discretion

is vested in Court to recall its own order, unless the mistake is clerical or arithmetical. The Apex Court in the case of Adalat Prasad (supra) has, in terms, laid down that even the order of issuing of process cannot be recalled by the Magistrate. The submission made by the learned Counsel for Respondent No.1 that the order in question was merely a correction of the clerical error cannot be accepted. In the present case, the order was passed, stating the reasons why the complaint was liable to be dismissed. Subsequently, the complainant had brought to the notice of the Magistrate that the dates mentioned in the said order were incorrectly mentioned. It cannot be said that the correction of the said dates is the correction of a clerical error since the Magistrate had applied his own mind after checking the roznama and has come to the conclusion that the reasons for which the order was passed were correct.

6. Hence, in my view, the impugned order is liable to be quashed and set aside and it is accordingly quashed and set aside.

7. Writ Petition is allowed in the above terms.

8. It is, however, clarified that Respondent No.1 herein is at liberty to file revision application or an application under section 482 as advised for the purpose of challenging the said order dated 14/10/2005. If a revision is filed within four weeks from today, the Sessions Court shall consider the said application on merits after condoning delay caused in filing the revision application and, thereafter, dispose of the said application as expeditiously as possible

and, in any case, within a period of four weeks.

9. Criminal Writ Petition is accordingly disposed of.

(V.M. KANADE, J.)